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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 230424-0111]

RIN 0648-BM13

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Resources of the Gulf of Mexico; Commercial Trip Limit for Gray Triggerfish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement management measures described in a framework action under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) as prepared by the Gulf of Mexico Fishery Management Council (Council). If implemented for gray triggerfish in the Gulf of Mexico (Gulf), this proposed rule would increase the commercial trip limit from 16 fish to 25 fish. The purpose of this action is to increase the gray

triggerfish commercial trip limit to allow commercial fishermen the opportunity to harvest the commercial annual catch target (ACT).

DATES: Written comments must be received by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments on the proposed rule identified by "NOAA-NMFS-2023-0044" by either of the following methods:

- *Electronic submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov* and enter "NOAA-NMFS-2023-0044" in the Search box. Click the "Comment" icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit all written comments to Peter Hood, NMFS Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal

identifying information, e.g., name and address, confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments - enter "N/A" in required fields if you wish to remain anonymous.

An electronic copy of the environmental assessment (EA) supporting this proposed rule may be obtained from the Southeast Regional Office website at <https://www.fisheries.noaa.gov/action/modification-gray-triggerfish-commercial-trip-limits>. The EA includes a regulatory impact review and a Regulatory Flexibility Act (RFA) analysis.

FOR FURTHER INFORMATION CONTACT: Peter Hood, NMFS Southeast Regional Office, telephone: 727-824-5305, or email: peter.hood@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the Gulf reef fish fishery, which includes gray triggerfish, under the FMP. The Council prepared the FMP and NMFS implements the FMP through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on a continuing basis, the optimum yield from federally managed fish stocks. These mandates are intended to ensure fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems.

All weights in this proposed rule are given in round weight unless indicated otherwise.

Gray triggerfish are managed under the FMP, and are harvested by commercial and recreational fishermen in the Gulf. The stock was determined to be undergoing overfishing according to the results of the 2006 Southeast Data, Assessment, and Review (SEDAR) 9 stock assessment. Based on the criteria selected by the Council in Amendment 30A to the FMP, the gray triggerfish stock was also considered overfished. Therefore, NMFS implemented a gray triggerfish rebuilding plan through Amendment 30A, as well as annual catch limits (ACLs), ACTs, and accountability measures (73 FR 38139, July 3, 2008). Amendment 30A also established the current allocation of the stock

ACL as 21 percent for the commercial sector and 79 percent for the recreational sector. The 2011 SEDAR 9 Update Assessment found that gray triggerfish were still overfished and undergoing overfishing. NMFS published a final temporary rule (77 FR 28308, May 14, 2012) that reduced the commercial and recreational ACLs and ACTs to end overfishing while the Council developed Amendment 37 to the FMP. Amendment 37 established a plan to rebuild the stock in 5 years and the implementing final rule reduced the ACLs and ACTs for gray triggerfish (78 FR 27084, May 9, 2013). Amendment 37 also established the first commercial trip limit of 12 fish to reduce commercial landings. The commercial trip limit is the amount of the applicable species that may be possessed on the vessel, or landed, purchased, or sold from a vessel per day (50 CFR 622.43). The Council decided to establish the commercial trip limit in numbers of fish instead of weight based on recommendations made by the Council's Law Enforcement Advisory Panel, who advised it would be difficult to enforce a low poundage limit of fish per trip, e.g., if a commercial trip limit was set at less than 75 lb (34 kg).

In 2017, the Council developed Amendment 46 to the FMP in response to the 2015 SEDAR 43 stock assessment. The assessment indicated the gray triggerfish stock was not experiencing overfishing, but was not rebuilt and remained overfished. Amendment 46 specified a new rebuilding timeline, and revised ACLs and ACTs. Commercial landings per trip were analyzed to determine the impact of changing the trip limit because the commercial sector was often harvesting gray triggerfish below its ACT since the implementation of the 12-fish commercial trip limit. The analyses supported an increase of the commercial trip limit to 16 fish to provide a better opportunity for the commercial sector to catch its ACT while the gray triggerfish stock continued to rebuild (82 FR 59523, December 15, 2017).

In 2017, the Council also developed Amendment 44 to the FMP. Amendment 44 reduced the overfished thresholds for gray triggerfish and six other reef fish species to reduce the likelihood that stock status changes between overfished and not overfished would occur frequently as a result of scientific uncertainty or natural fluctuations in biomass levels (82 FR 61487, December 28, 2017). Although this action

resulted in the determination that gray triggerfish was no longer overfished, the rebuilding plan remained in place because the rebuilding target, which is the biomass that produces maximum sustainable yield, had not been achieved.

In 2020, the Council's Scientific and Statistical Committee (SSC) reviewed an interim analysis of the gray triggerfish stock conducted by the NMFS Southeast Fisheries Science Center. The analysis suggested an increasing biomass trend of the gray triggerfish stock that could support a greater harvest. The Council's SSC determined the interim analysis was suitable for providing sufficient catch advice to update the acceptable biological catch (ABC), and the SSC recommended an increase in the ABC. As a result, the Council increased the ACLs and ACTs consistent with the ABC increase through a framework action under the FMP. The final rule, implemented on July 29, 2021, increased the commercial ACL for gray triggerfish from 64,100 lb (29,075 kg) to 95,949 lb (43,522 kg) and the commercial ACT increased from 60,900 lb (27,624 kg) to 88,273 lb (40,040 kg) based on the current sector allocations (86 FR 34159, June 29, 2021).

Since implementation of the 16-fish trip limit in 2018, commercial landings have been below the commercial ACL and ACT, with the exception of in 2018 when 100.9 percent of the ACL was landed. Additionally, since the most recent ACL and ACT increase in 2021, commercial landings in 2021 and preliminary 2022 commercial landings were 45 and 47 percent, respectively, of the sector's ACL, and 49 and 51 percent, respectively, of the sector's ACT.

During public testimony at meetings of the Council and the Council's Reef Fish Advisory Panel, commercial industry stakeholders indicated that the 16-fish trip limit is still limiting commercial landings and gray triggerfish are only landed incidentally when targeting other species. As a result, the commercial industry stakeholders requested the Council increase the trip limit to reduce discards when encountering gray triggerfish and allow for increased harvest of these fish to make it worthwhile to retain them when they are encountered. Analyses of alternatives increasing the trip limit to 20, 25, and 30 fish indicated that increasing the trip limit is not expected to result in an early closure of the commercial harvest of gray triggerfish. The Council

selected the 25-fish commercial trip limit based on the advice of its Reef Fish Advisory Panel, which advocated for a conservative approach that allows for an increased trip limit but reduces the likelihood of an in-season closure that may occur with a higher trip limit.

Management Measure Contained in This Proposed Rule

If implemented, this proposed rule would increase the Gulf gray triggerfish commercial trip limit from 16 fish to 25 fish. Although this trip limit increase is projected to increase annual landings of gray triggerfish by 33 percent, projections developed for the framework action indicate the commercial season would stay open through each fishing year with the exception of the existing seasonal closure from June 1 through July 31.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the framework action, the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Pursuant to section 605(b) of the RFA, the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination follows.

A description of this proposed rule, why it is being considered, and the objectives of this proposed rule are contained in the **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections of this proposed rule. The Magnuson-Stevens Act provides the statutory basis for this proposed rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this proposed rule.

This proposed rule, if implemented, would increase the commercial trip limit for gray triggerfish. The commercial trip limit would apply to all federally-permitted commercial vessels that fish for or harvest gray triggerfish in Federal waters of

the Gulf. It would not directly apply to federally-permitted dealers. Any change in the supply of gray triggerfish available for purchase by dealers as a result of this proposed rule, and associated economic effects, would be an indirect effect of the proposed rule and would therefore fall outside the scope of the RFA.

During 2020, there were a total of 837 valid or renewable commercial permits for Gulf reef fish. On average from 2017 through 2021, there were 261 federally-permitted commercial vessels with reported landings of gray triggerfish in the Gulf. The average annual vessel-level gross revenue from all species for 2017 through 2021 was \$159,747 (2021 dollars) and gray triggerfish harvested in the Gulf accounted for less than half a percent of this revenue. For commercial vessels that harvest gray triggerfish in the Gulf, economic profits are estimated to be \$51,279, or approximately 32.1 percent of annual gross revenue, on average. The maximum annual revenue from all species reported by a single one of the vessels that harvested gray triggerfish from 2017 through 2021 was approximately \$2.8 million (2021 dollars).

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (North American Industry Classification System code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide. All of the commercial fishing businesses directly regulated by this proposed rule are believed to be small entities based on the NMFS size standard. No other small entities that would be directly affected by this rule have been identified.

This proposed rule would raise the commercial trip limit for gray triggerfish from 16 fish to 25 fish per vessel. NMFS expects this change to increase commercial gray triggerfish landings by 16,782 lb (7,612 kg) in gutted weight, or 33 percent relative to the status quo. These additional landings would be worth an estimated \$38,246 (2021 dollars) in aggregate annual ex-vessel revenue. Divided by the average

number of vessels with reported landings of gray triggerfish from 2017 through 2021, this translates to an annual increase of \$147, or approximately 0.1 percent of average annual per vessel gross revenue. Because gray triggerfish generates only a fraction of total revenue for vessels that land the species, NMFS assumes this proposed rule would not materially affect fishing effort or trip costs. Therefore, this increase in ex-vessel revenue would equate to an equivalent increase in economic profits (0.3 percent of average annual economic profits). Individual fishing businesses, however, may experience varying levels of economic effects, depending on their fishing practices, operating characteristics, and profit maximization strategies.

In summary, the information provided above supports a determination that this proposed rule would not have a significant economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Gray triggerfish, Gulf of Mexico.

Dated: April 24, 2023.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 622 as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 622.43, revise paragraph (b) to read as follows:

§ 622.43 Commercial trip limits.

* * * * *

(b) *Gray triggerfish* - 25 fish. The commercial trip limit applies until the commercial quota

specified in § 622.39(a)(1)(vi) is reached, which is equal to the commercial ACT. See § 622.39(b) for the limitations regarding gray triggerfish after the commercial quota is reached.

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[FR Doc. 2023-08992 Filed: 5/4/2023 8:45 am; Publication Date: 5/5/2023]